THE RIGHT TO KNOW HAZARDOUS SUBSTANCES IN THE COMMUNITY AND WORKPLACE: THE MUNICIPAL ROLE

A Report Prepared for
the
Department of Public Health
City of Toronto

METROPOLITAN
TORONTO
CENTRAL
LIBRARY
Reference

by

John Jackson

June 1, 1983

TABLE OF CONTENTS

Summary ... i

Part I: The Right to Know ... 1

Part II: The Existing Situation ... 4

Part III: The Municipal Role ... 5

Part IV: A Hazardous Substances Disclosure By-Law ... 9

Part V: Public Access to Information ... 14

Part VI: The Data Base ... 16

Part VII: Transportation ... 17

Part VIII: Labelling ... 18

Part IX: Other Municipalities ... 19

Appendix 1: Federal and Provincial Legislation Gathering Information on Hazardous Substances ... 20

Appendix 2: Provincial Legislation Delegating Relevant Powers ... 30

Appendix 3: Material Safety Data Sheet ... 36

Appendix 4: Confidentiality Provisions ... 39

Appendix 5: Reading Materials ... 44

METROPOLITAN
Municipal Reference

SUMMARY

Increasingly we are confronted by problems caused by hazardous substances in our workplaces and communities. In order for the City and those who live and work in it to make decisions that will lessen these problems, it is necessary to know where hazardous substances are located. Unfortunately, this information is not now available. Information is gathered in only an incomplete manner. Also much of the information that is gathered is not compiled in an accessible way and is held in confidence.

The City needs to develop methods by which it can assist in gathering and making available such information. Municipalities are limited in their ability to legislate by the provincial-municipal relationship. The following recommendations are based on an assessment of a possible municipal role given the limitations in municipal powers.

Recommendations:

1. * The City of Toronto should lobby the Minister of Municipal Affairs and Housing to proceed with discussion on and passage of the Municipal Licensing Act. It should encourage other municipalities to lobby the Minister on this Bill. (Page 6)

2. * If it cannot obtain passage of the Municipal Licensing Act, the City of Toronto should ask the provincial government for special legislation enabling the City to pass by-laws requiring disclosure of hazardous substances. (Page 6)

3. * The City of Toronto should pass a Hazardous Substances Disclosure By-Law to gather and make public information on hazardous substances stored, used, processed, produced or disposed of in Toronto. (Page 8 and 9 - 13)

4. * The City of Toronto should develop guidelines describing how information gathered through the Hazardous Substances Disclosure By-Law will be made available to the public. (Page 14)

5. * The Department of Public Health should develop a programme to gather, update and disseminate information on hazardous substances. (Page 16)

6. * The City of Toronto should urge the provincial government to:

(A) gather and distribute information on hazardous substances transported by road in the municipality, and

(B) extend the scope of and refine the existing waybill system and make the information thus gathered publicly available showing wastes generated by specific companies. (Page 17)

7. * The City of Toronto should urge the federal government to gather and distribute information on hazardous substances transported by rail in the municipality. (Page 17)

8. * The City of Toronto should urge the federal and provincial governments to implement placarding requirements for transportation vehicles carrying hazardous substances as soon as possible. (Page 18)

9. * The City of Toronto should urge the federal and provincial governments to develop and implement requirements for labelling containers of industrial chemicals. (Page 18)

10. * The City of Toronto should encourage other municipalities to pass hazardous substances disclosure by-laws. (Page 19)

11. * The City of Toronto should work through the Association of Municipalities of Ontario, the Association of Ontario Boards of Health and the Canadian Federation of Mayors and Municipalities to urge the provincial and federal governments to develop the right to know. (Page 19)

PART I: THE RIGHT TO KNOW

In 1978, the Toronto Board of Health and Toronto City Council approved the recommendations of the report "Public Health in the 1980's." These recommendations assigned to the Board of Health a role in the protection of the city's physical environment; this was specified to include concerns with air and water pollution, chemical hazards and occupational health and safety. The Province recently passed the Health Protection Act which states that the duties of the Medical Officer of Health include matters related to occupational or environmental health.

An essential first step in responding to concerns with contamination of the physical environment is a knowledge of which hazardous substances are present in the community and where they are located. Only then can actions be taken to carry out the Board's responsibilities as assigned to it by City Council and the Province.

Recognition of the need for this basic information has led in many communities to the demand for the right to know about the presence of hazardous substances. The City of Philadelphia was the first municipality in North America to pass legislation providing for the public's right to know. This ordinance, adopted in 1981, has been followed by similar legislation in Cincinnati, Ohio and eleven municipalities in California including Sacramento, San Jose and Santa Monica. Numerous other municipalities are now considering such legislation.

In Canada, at least two municipalities have made similar initiatives. A committee set up by Windsor City Council is investigating the possibility of a municipal disclosure by-law. Toronto's Board of Health commissioned this study in September 1981 to investigate ways that information on toxic materials can be made available to the public.

Information on the presence of hazardous substances is essential in carrying out certain municipal functions. The health department needs it to protect the public from dangers that the physical environment may present. The police and fire departments respond to emergencies such as spills or fires; entering unknown situations and coming into contact with hazardous substances unawares can endanger police officers, firefighters and residents in neighbouring communities. The planning department can benefit from such information; for example, one of the criteria that could be taken into account when determining the proper location for residential development is whether places carrying hazardous substances are nearby. Those in charge of the sewage treatment plant need to know which chemicals are being dumped into the sanitary sewers so they can take action to guard against the negative impacts chemicals can have on the operation of the treatment

plant. The building department is responsible for ensuring that flammable materials are safely stored by private owners; information on the substances present is the beginning point in achieving this goal.

The public also needs access to this information. People residing in a community should know the kinds of hazardous substances nearby so they can take action to protect themselves and their neighbourhoods. Workers need access to such information so they can take the proper precautions in handling materials at work and can make sure they are being provided with adequate protection.

The right to know provides basic information that is the essential starting point in allowing the City and the concerned public to take action to protect their health and the environment.

Objectives:

People should have the right to know which hazardous substances they may encounter in their workplaces and in their communities. Fulfilment of this right requires:

* knowledge of which hazardous substances are used, stored and produced in each factory, warehouse and commercial operation in the community;

* knowledge of which hazardous substances are emitted from each enterprise into the air, water and land;

* knowledge of which hazardous substances are transported through the community; and

* knowledge prior to the substance being used, stored, produced, emitted or transported.

Adequate public availability of this knowledge requires:

* a listing of all hazardous substances both within the specific workplace and at some central location or locations within the community. This listing should include trade names, chemical names of all substances in the item, handling precautions, possible hazards and results of tests on the substance.

* labels clearly visible on all containers holding hazardous substances within the workplace and on transportation vehicles. These labels should include the chemical names, handling precautions and possible hazards.

The purposes of this report are to determine the extent

to which these objectives are now being met for the people of Toronto and to recommend means by which the City can help make the right to know a reality.

PART II: THE EXISTING SITUATION

Several pieces of federal and provincial legislation require companies to provide information on chemicals that they handle. The potential of each of these to fulfil the right to know objectives has been assessed (see Appendix 1). Unfortunately, neither individually nor collectively do they provide the necessary access. They fail in four major areas:

1) Each piece of legislation requires reporting on only a limited number of substances. For example, as of December 1981 the federal government had required data from companies on only 13 chemicals under the powers of the Environmental Contaminants Act.

2) Sometimes information is available on only a limited number of industries. The Ontario region of the Environmental Protection Service of Environment Canada, for example, is developing an inventory of chemicals by specific industries; but in Toronto only 50 companies have been included in this inventory thus far.

3) Each piece of legislation has strong confidentiality provisions assuring industry that most of the information gathered will not be made known to the public or other government bodies.

4) The information gathered is not compiled in one place where a decision-maker or member of the public can have access to all the information. The lack of one responsible agency also results in a lack of comprehensiveness; hazardous chemicals can slip between the cracks and information on them not be gathered by anyone.

A similar situation exists at the municipal level. The Fire Department gathers information on chemicals as a firefighting precaution; that information, however, is limited and not available to the general public and other City departments. The development section of the Department of Planning and Development gathers information on industries in the city including production processes; this also is not generally available.

The lack of comprehensiveness in gathering information and the lack of one place where information is available point to the need for a standardized approach in obtaining and storing information on hazardous chemicals.

PART III: THE MUNICIPAL ROLE

Ideally, right to know legislation should be passed at a level of government that would ensure this right across a wide geographic area. One reason for this is that everyone should have this basic right regardless of where they live. Another reason is that enforcement of certain aspects of right to know at the local level is not practical. For example, requiring placarding on trucks in the City of Toronto different from that in North York would create substantial awkwardness.

The ultimate goal, therefore, should be passage of right to know legislation at the federal and provincial levels. Such passage, however, is unlikely to happen in the shortrun. The more realistic goal at this point is to pass some aspects of the right to know at the municipal level. This could immediately result in a significant increase in access to some important information. The City of Toronto's example is likely to be followed by other municipalities. This would create a momentum that would increase the likelihood of achieving the ultimate goal: right to know legislation at the federal and provincial levels.

The Municipality's Legal Position:

Certain questions must be answered to determine whether a municipality can pass by-laws on a particular topic:

Question 1: Does the power lie in the federal or the provincial jurisdiction? If it falls within the power of the federal government, there is no possibility of the municipality passing by-laws on the matter. Two aspects of the right to know objectives lie within federal powers and are, therefore, removed from municipal jurisdiction: transportation of hazardous goods by rail, and handling and transportation of radioactive materials.

Question 2: Is there provincial legislation empowering the municipality to pass by-laws on this subject? Since municipalities are "creatures of the province", the municipality has only those powers delegated to it by the provincial government. Ontario legislation does not now delegate to municipalities the power to require private businesses to provide information on chemicals. The Municipal Licensing Act, Bill 11, introduced in March 1982 by the Minister of Municipal Affairs and Housing, Hon. C. Bennett, would have given municipalities the power to license, regulate or govern any business carried out within the municipality. This would have included the power to require information on substances handled by businesses. However, after opposition from the industrial sector, including the Canadian Manufacturers Association, the Minister did not bring the Bill back to committee for further consideration. His staff indicates that the Bill is not likely

to be brought forward again.

RECOMMENDATION 1: THE CITY OF TORONTO SHOULD LOBBY THE MINISTER OF MUNICIPAL AFFAIRS AND HOUSING TO PROCEED WITH DISCUSSION ON AND PASSAGE OF THE MUNICIPAL LICENSING ACT. IT SHOULD ENCOURAGE OTHER MUNICIPALITIES TO LOBBY THE MINISTER ON THIS BILL.

Several pieces of provincial legislation granting powers to municipalities contain general wording that could be interpreted as the right to require information on hazardous substances [see Appendix 2]. These contain phrases such as "prevent nuisances", "information in respect of occupational or environmental health", "having regard to relevant social, economic and environmental matters." The courts, however, interpret the legislative powers granted to municipalities restrictively; a court will usually limit the legislative powers to those specifically enumerated in the empowering statute. It is unlikely that a by-law based upon general phrases could withstand a challenge in the courts.

The preferred option, therefore, would be to seek a special act of the provincial legislature specifically giving the City of Toronto this power. This special act could be obtained by having a private bill introduced. The general phrases in existing provincial legislation could be used in justifying the City's right to have this special legislation by showing that it is within goals and duties already assigned to the City by the Province.

RECOMMENDATION 2: IF IT CANNOT OBTAIN PASSAGE OF THE MUNICIPAL LICENSING ACT, THE CITY OF TORONTO SHOULD ASK THE PROVINCIAL GOVERNMENT FOR SPECIAL LEGISLATION ENABLING THE CITY TO PASS BY-LAWS REQUIRING DISCLOSURE OF HAZARDOUS SUBSTANCES.

Question 3: Does the proposed municipal by-law contradict or interfere with the intent of any provincial statutes, regulations or actions? Provincial legislation takes precedence over municipal by-laws. One court judgement stated: "Where the Provincial legislature has itself undertaken to deal with a certain subject matter in the interest of the inhabitants of the Province all legislation by the municipality must be subject to the provincial enactment" [Middleton, J.S. in Re: Morrison and the City of Kingston (1938)]. All Ontario court judgements since that time have reached the same conclusion.

The City must make sure that its actions will not overlap, interfere with or contradict provincial actions. The Dangerous Goods Transportation Act reserves to the Ontario government control over transportation of hazardous goods, other than radioactive ones, on public roads. There may also be overlapping with the Occupational Health and Safety Act and the Environmental Protection

Act. The Occupational Health and Safety Act is concerned with hazardous chemicals in the workplace; it does not, however, list such chemicals. In its activities under the Environmental Protection Act, the Province acquires information on industrial emissions. Toronto's right to know legislation could be viewed as supports to the Province's actions.

Question 4: What is the division of powers between the City of Toronto and the Municipality of Metropolitan Toronto? With the exception of matters to do with metro roads, the division of powers between these two governments would not impede the City of Toronto's ability to pass right to know legislation.

A Role for the City of Toronto:

The City of Toronto should pass a Hazardous Substances Disclosure By-Law. The By-Law should be aimed at fulfilling the following objectives as described on page 2 of this report:

* knowledge of which hazardous substances are used, stored and produced in each factory, warehouse and commercial enterprise in the City of Toronto, and

* knowledge of which hazardous substances are emitted from each enterprise into the air, water and land.

The other two objectives listed on page 2 should not be included in the Hazardous Substances Disclosure By-Law. The required release of information on hazardous substances transported through Toronto is outside of possible municipal jurisdiction. It is neither feasible nor useful under existing legislative limitations for the City to acquire knowledge of hazardous substances prior to their being used, stored, produced, emitted or transported in Toronto. Prior notice would result in considerable paperwork and delays for industrial and commercial enterprises; this would create business opposition. Since the municipality cannot have the power to prohibit the introduction of chemicals into a properly zoned place, no benefit is gained and, therefore, it is not worth stimulating opposition. The municipality's only power is, in some situations, to regulate how hazardous substances are handled. The requirements for prompt notice after introduction would allow the municipality to take precautions and make demands on the owner. There is one exception to this situation, however. If the City's Department of Planning and Development places policies on the location of enterprises handling hazardous substances into the City's official plan, those requesting building permits, rezonings or variances could be required to state whether they will have certain hazardous materials.

The right to know objectives on page 2 state that the

information should be publicly available in two forms. The Hazardous Substances Disclosure By-Law should provide for the first objective: available as a listing in the workplace and at a central location in the community. The Hazardous Substances Disclosure By-Law cannot, however, provide for the second objective: labelling of storage containers and transportation vehicles. The federal and provincial governments are now developing regulations for each of these. Therefore, the municipality cannot play a role in it. Also, it is not realistic to require labelling of containers at the municipal level.

RECOMMENDATION 3: THE CITY OF TORONTO SHOULD PASS A HAZARDOUS SUBSTANCES DISCLOSURE BY-LAW TO GATHER AND MAKE PUBLIC INFORMATION ON HAZARDOUS SUBSTANCES STORED, USED, PROCESSED, PRODUCED OR DISPOSED OF IN TORONTO.

PART IV: A HAZARDOUS SUBSTANCES DISCLOSURE BY-LAW

The objective of this By-law is to provide the public and municipal officials with knowledge of certain hazardous substances in the City of Toronto.

CLAUSE 1: ANNUALLY EACH COMPANY OR PERSON OPERATING IN THE CLASSIFICATIONS OF INDUSTRIAL AND COMMERCIAL ENTERPRISES SPECIFIED IN THIS BY-LAW SHALL COMPLETE A HAZARDOUS SUBSTANCES DISCLOSURE FORM AND RETURN IT TO THE CITY CLERK'S OFFICE.

Only those types of enterprises likely to handle the hazardous substances listed on the Hazardous Substances Disclosure Form should be required to complete the form. For example, most retail stores should not have to fill out such a form. This limitation will reduce both the amount of paperwork and the administration costs for the City of Toronto. Enterprises will be classified according to the types of substances they are likely to handle. Such a classification may be available from the Department of Planning and Development. Using this as a basis, the Department of Public Health can recommend the classifications of companies that should be required to fill out the Disclosure Form.

Once a year, the City Clerk's office will send the Disclosure Form to each enterprise in the City of Toronto falling into these categories. The companies will be required to return the form within a specified number of days.

CLAUSE 2: THE HAZARDOUS SUBSTANCES DISCLOSURE FORM SHALL LIST THOSE HAZARDOUS SUBSTANCES THAT MUST BE REPORTED. THE LIST OF HAZARDOUS SUBSTANCES SHALL BE DETERMINED BY THE BOARD OF HEALTH. THE BOARD OF HEALTH SHALL CONDUCT MEETINGS TO RECEIVE PUBLIC INPUT ON THE PROPOSED LIST. AT ANY TIME, SUBSTANCES MAY BE ADDED TO OR DELETED FROM THE LIST USING THE SAME PROCEDURE.

The Hazardous Substances Disclosure Form will list those substances that the City has determined it is most concerned about. A requirement that all chemicals handled by a company be listed on the Disclosure Form would bog the system down. The necessary sorting of the resultant huge amounts of data in City Hall would become an almost impossible task. In addition, substantial resistance would arise from companies because of the reporting time involved for them.

The Department of Public Health, with input from other concerned departments, should recommend the list. This list can be based on hazardous substances lists already developed by Environment Canada, Canada's Department of Health and Welfare and U.S. agencies such as the National Institute for Occupational Safety and Health and the Environmental Protection Agency. This

list will then be released to the Board of Health and the public. The Board will hold a meeting to receive delegations on the contents of the proposed list.

This list should not be discussed until after the Hazardous Substances Disclosure By-Law has been passed. Discussion at this stage should focus on the principles of disclosure rather than the degree of hazard of a particular substance. It would be useful, however, to give a general idea of the probable length of the list at this point so the Board of Health, City Council and the public have an indication of the dimensions of the proposed programme.

CLAUSE 3: THE OPERATOR SHALL CHECK OFF THOSE HAZARDOUS SUBSTANCES THAT ARE STORED, USED, PROCESSED, PRODUCED OR DISPOSED OF AT THAT BUSINESS LOCATION.

The business' operator will check off on the list whether they have the substance on the premises. Even if the company has none of these substances, it will have to complete, sign and return the Form to the City Clerk's office. Only if such a return is required can the City be sure that the company saw the Form. Also, if a hazardous substance is later found on the premises but the Clerk's office has not been informed, the offender has no excuse since the Form was signed stating that the substance was not present [see Clause 10].

The people filling in the Form will not be required to state the quantities of the substances handled. The main concern is the presence of hazardous substances -- not the quantities. A request for quantities would likely result in heavy resistance to compliance with the By-Law. This should be avoided since the successful implementation of this By-Law will hinge upon support from the owners of companies.

The Disclosure Form should have a separate column where the company indicates those substances disposed of and states where and how these materials were disposed. Included in those substances reported as "disposed" will be materials transported off the property for disposal, stored on the property awaiting disposal, disposed of on the property and emitted into the air, water or land.

The definition of "produced" should include intermediate products in a production process. These substances must be known since workers in the plant may come into contact with them and since the substances may be released, accidentally or intentionally, into the City's air, water or land.

CLAUSE 4: HAZARDOUS SUBSTANCES THAT ARE STORED, USED, PROCESSED,

PRODUCED OR DISPOSED OF IN A CUMULATIVE YEARLY QUANTITY OF LESS THAN _____ KILOGRAMS OR _____ LITRES, WHICHEVER IS LESS, SHALL BE EXEMPTED FROM THE DISCLOSURE PROVISIONS. THE MINIMUM QUANTITY REQUIREMENT FOR ANY SUBSTANCE OR SUBSTANCES ON THE LIST MAY BE LOWERED OR COMPLETELY REMOVED BY THE BOARD OF HEALTH AFTER CONDUCTING A MEETING TO RECEIVE PUBLIC INPUT. HERE THE WORD "HAZARDOUS SUBSTANCE" IS DEFINED TO INCLUDE A MIXTURE CONTAINING ONE OR MORE HAZARDOUS SUBSTANCES.

It is sometimes stated that a disclosure by-law will be too large an encumbrance on the public if disclosure is required even if a single litre is carried. To avoid this problem, a level could be set below which reporting is not required. However, the hazardous nature of some substances may be such that the Department of Public Health believes it should be aware of the presence of even very small quantities. The Board of Health, after the opportunity for public input, should have the power to reduce or remove this quantity exemption for specific hazardous substances.

The definition of hazardous must include mixtures. The weight or volume of the component that is hazardous does not have to be the specified number of kilograms or litres. Even if it is the only hazardous component of the mixture, the entire mixture is made hazardous by the presence of a hazardous substance spread throughout it.

CLAUSE 5: FOR EACH HAZARDOUS SUBSTANCE REPORTED ON THE HAZARDOUS SUBSTANCES DISCLOSURE FORM, THE OPERATOR SHALL SUBMIT A COMPLETED MATERIAL SAFETY DATA SHEET.

Manufacturers who produce or sell hazardous substances in the U.S. fill out standard Material Safety Data Sheets [see Appendix 3]. These state the chemical name of the hazardous components, the hazardous nature of the substance, precautionary and protective measures that should be taken and remedial actions if release or exposure occurs. Since most products in use in Canada are also used in the U.S., these sheets are readily available for most substances and, therefore, can easily be submitted to City Hall. In those cases where an MSDS is not available, the user should be required to complete one.

Sometimes chemical manufacturers and distributors do not automatically send the MSDS when they make sales. As a result, some users are not aware of the hazardous nature of a substance. Requiring users to submit the MSDS to the City will assure that the users obtained this information and will increase the likelihood that they will have read it and taken precautions.

CLAUSE 6: IF AN OPERATOR BEGINS HANDLING A HAZARDOUS SUBSTANCE NOT PREVIOUSLY REPORTED ON ITS HAZARDOUS SUBSTANCES DISCLOSURE

FORM, IT SHALL REPORT SUCH ADDITION TO THE CITY CLERK'S OFFICE WITHIN FIFTEEN DAYS OF FIRST HANDLING IT.

A business may introduce new substances into its processes. It is then responsible for notifying in writing the Clerk's office of such changes. When a new business starts operating, it will automatically be sent a Hazardous Substances Disclosure Form by the City Clerk's office if it falls into those categories of enterprises specified as likely to handle hazardous substances.

CLAUSE 7: THE MEMBERS OF THE DEPARTMENTS OF FIRE, PUBLIC HEALTH AND BUILDINGS AND INSPECTIONS SHALL HAVE THE RIGHT TO INSPECT THE PREMISES AT ANY REASONABLE TIME TO VERIFY THE INFORMATION CONTAINED ON THE HAZARDOUS SUBSTANCES DISCLOSURE FORM. EACH PREMISE SHALL BE INSPECTED AT LEAST ONCE EVERY THREE YEARS.

Frequent inspections will not be possible. To a large extent the City will have to rely upon the honesty of those filling out the Forms. One group that may be aware of omissions from the Form are those in the workplace. According to Clause 8 of this By-Law, the Disclosure Form must be posted in the workplace. At the bottom of this Form will be a City Hall number to be contacted for revisions or to have an inspection conducted. If an inspection is requested, an inspector shall conduct the inspection and report back to the inquirer within a set time limit. If so requested, the questioner should be allowed to accompany the inspector on the visit.

A special programme in identification of hazardous substances will have to be developed to train the City's inspectors.

CLAUSE 8: ANY PERSON MAY HAVE ACCESS TO THE INFORMATION ON THE HAZARDOUS SUBSTANCES DISCLOSURE FORM AND ON THE MATERIAL SAFETY DATA SHEET AT ANY REASONABLE TIME AT THE DEPARTMENT OF PUBLIC HEALTH. ANY PERSON MAY HAVE A COPY OF THESE FORMS UPON PAYMENT OF THE COPYING COST. THE HAZARDOUS SUBSTANCES DISCLOSURE FORM AND THE MATERIAL SAFETY DATA SHEETS SHALL ALSO BE POSTED IN THE WORKPLACE ON THE PREMISES WHERE THESE SUBSTANCES ARE.

The material should be available in City Hall so any municipal employee or any interested member of the public can have easy access. The information should also be posted in the workplace. Since those in the workplace are the ones most likely to come into contact with the hazardous substance in high concentrations, they need the easiest possible access to the information. The questions of public access and confidentiality are discussed in Part V.

CLAUSE 9: THE OPERATOR SHALL PAY A FEE TO COVER THE CITY'S

COSTS FOR ADMINISTERING THIS BY-LAW.

CLAUSE 10: FAILURE TO FOLLOW THE PROVISIONS OF THIS BY-LAW SHALL MAKE THE CORPORATION OR PERSON LIABLE TO A FINE.

A "not guilty" plea based on not being aware that the substance was present should not be a valid defense. Under this By-Law it becomes the responsibility of the business operator to acquire all such information.

PART V: PUBLIC ACCESS TO INFORMATION

Basic to the movement for right to know is the realization that information is the essential beginning point in protecting human health and the environment. It is not sufficient for government decision-makers to have access to information on hazardous chemicals in the community. If the public are to be part of the decision-making process and take active roles in protecting themselves and their community, they also must have full access to such information.

In Ontario, the public does not have the right to information unless legislation guarantees such access. This means that in most cases, public access is left to the discretion of individual civil servants. Such a situation runs contrary to the tenets of right to know. For this reason, Toronto's Hazardous Substances Disclosure By-Law should state that the public shall have full access (see Clause 8 in the proposed By-Law, page 12).

In addition, the City should develop written guidelines describing where information shall be available, times when people shall have access to it, costs involved in obtaining copies and defining who is responsible for making sure that the information is available.

RECOMMENDATION 4: THE CITY OF TORONTO SHOULD DEVELOP GUIDELINES DESCRIBING HOW INFORMATION GATHERED THROUGH THE HAZARDOUS SUBSTANCES DISCLOSURE BY-LAW WILL BE MADE AVAILABLE TO THE PUBLIC.

The Confidentiality Issue:

At the 1981 conference on Toxic Chemicals Law and Policy in Canada, William Neff of the Canadian Chemical Producers' Association summarized industry's concern with confidentiality:

> A company's confidential information is one of its most valuable assets, because it represents a long-term investment in research, development, manufacturing experience, marketing strategy and business development. In addition, some companies sell their technology and knowledge as part of their business.

Canadian laws requiring companies to provide information usually contain clauses allowing for confidentiality. (Examples of these are listed in Appendix 4.) In 1980, Ontario's Commission on Freedom of Information and Individual Privacy made recommendations which reflect the generally accepted guidelines:

> 46 a. A governmental institution may refuse to disclose a record:
>
> i. Containing a trade secret or other financial, commercial, scientific or technical

information obtained from a person, if the disclosure of that information could reasonably be expected to prejudice significantly the competitive position, or interfere significantly with the contractual or other negotiations, of a person, group of persons, or organization.

b. A governmental institution shall not refuse to disclose a record under the exemption proposed in paragraph 46 (a) where a compelling public interest in favour of disclosure outweighs the risk of commercial disadvantage to the submitter of the information, such as the public interest in environmental protection, public health and safety, and consumer protection.

Unfortunately, the burden of proof has lain with those defending the public interest rather than with those defending confidentiality. Usually a company simply has to request confidentiality and it is automatically given. If this were to become the case in Toronto, the intention of the Hazardous Substances Disclosure By-Law would be vitiated.

Under the right to know provisions for the City of Toronto, the company would have to check off from a list those hazardous substances it handles. It would not be required to state what quantities it uses or release formulas.

Increasingly, the name of a substance is not accepted as a legitimate trade secret. Just saying that an item is in a plant does not tell competitors how the material is used. For example, in 1979 the U.S. National Labor Relations Board ruled that 3-M Company was guilty of unfair labour practices for failure to release the generic names of chemicals and substances used and produced at its plant. At those hearings, it was shown that out of 700 generic chemicals at the plant, there was only one substance whose identity might provide advantage to competitors.

The public release of specific quantities, formulas and of information on a new chemical prior to marketing are the areas where the company's competitive position may be affected. The City of Toronto will not be requiring these types of information in its Hazardous Substances Disclosure By-Law. Therefore, there is no need for confidentiality provisions.

PART VI: THE DATA BASE

Under the Hazardous Substances Disclosure By-Law, the users of the specified hazardous substances will be required to send their Material Safety Data Sheets to the City Clerk. MSDS's are notoriously skimpy in the information they contain and frequently downplay the seriousness of the hazards. These Data Sheets are put together and distributed by those who are trying to sell the chemicals; naturally, they do not want to scare off potential buyers by stressing the hazardous nature of their products.

To provide a more complete and less biased perspective on the nature of hazardous substances, the Department of Public Health should gather information on each of the items on the Disclosure Form. This should include studies in the scientific literature on the environmental and health effects and precautions recommended. All this information should be available to the public. Discrepancies between the information on the MSDS and the information gathered by the Department should be pointed out to the user to encourage proper precautions in the material's handling.

The Department should develop a programme to constantly update this information and to assess whether changes should be made in the list on the Hazardous Substances Disclosure Form.

RECOMMENDATION 5: THE DEPARTMENT OF PUBLIC HEALTH SHOULD DEVELOP A PROGRAMME TO GATHER, UPDATE AND DISSEMINATE INFORMATION ON HAZARDOUS SUBSTANCES.

PART VII: TRANSPORTATION

Jurisdiction over transportation of hazardous substances lies with the federal and provincial governments under the Transportation of Dangerous Goods Act (federal) and the Dangerous Goods Transportation Act (Ontario). For this reason, transportation concerns have not been included in the Hazardous Substances Disclosure By-Law. Nevertheless, the City of Toronto could lobby the federal and provincial governments to take actions to further the public's and the municipality's right to know on transportation matters.

In October 1981, the municipal Inter-Association Working Group on Transportation of Dangerous Goods urged "the [Ontario] Ministry of Transportation and Communications [to] assume responsibility for the collection and distribution of information regarding the types and movement of dangerous goods through municipalities." The Inter-Association was made up of representatives from the Association of Counties and Regions of Ontario, the Association of Municipalities of Ontario and the Rural Ontario Municipal Association. This resolution applied only to transportation on public roads. The federal government should be lobbied to undertake similar practices with regard to rail transportation.

The provincial government should revise its waybill system (tracing the transportation and disposal of hauled liquid industrial wastes) to include materials for recycling and those not carried on public roads and to more clearly define the hazardous components. This would make the information more useful.

The information gathered on the waybills is available to the City and to private citizens in a compiled form only; the Province's policy is not to release data on the types of wastes hauled from specific companies. This reduces the public's right to know the location of hazardous substances.

RECOMMENDATION 6: THE CITY OF TORONTO SHOULD URGE THE PROVINCIAL GOVERNMENT TO:

(A) GATHER AND DISTRIBUTE INFORMATION ON HAZARDOUS SUBSTANCES TRANSPORTED BY ROAD IN THE MUNICIPALITY, AND

(B) EXTEND THE SCOPE OF AND REFINE THE EXISTING WAYBILL SYSTEM AND MAKE THE INFORMATION THUS GATHERED PUBLICLY AVAILABLE SHOWING WASTES GENERATED BY SPECIFIC COMPANIES.

RECOMMENDATION 7: THE CITY OF TORONTO SHOULD URGE THE FEDERAL GOVERNMENT TO GATHER AND DISTRIBUTE INFORMATION ON HAZARDOUS SUBSTANCES TRANSPORTED BY RAIL IN THE MUNICIPALITY.

PART VIII: LABELLING

Labelling of containers in the workplace and of trucks and train cars carrying hazardous substances is essential so information will be immediately available to those who may come into contact with them. These labels should contain the chemical names of the contents, handling precautions and possible hazards.

Requirements for labelling or placarding transportation vehicles are powers of the federal and provincial governments. These two levels of government are in the process of passing regulations requiring uniform placarding of all transportation vehicles in Canada.

RECOMMENDATION 8: THE CITY OF TORONTO SHOULD URGE THE FEDERAL AND PROVINCIAL GOVERNMENTS TO IMPLEMENT PLACARDING REQUIREMENTS FOR TRANSPORTATION VEHICLES CARRYING HAZARDOUS SUBSTANCES AS SOON AS POSSIBLE.

Legally it may be possible for municipalities to require labelling of containers within the workplace if special legislation is obtained, but it is not realistic to require it. Since distribution of materials goes far beyond the boundaries of any one municipality, it would require stopping all materials as they crossed the boundary into Toronto and adding labels. This would cause considerable resistance from manufacturers and distributors. The federal and provincial governments have set up a task force to investigate labelling of containers.

RECOMMENDATION 9: THE CITY OF TORONTO SHOULD URGE THE FEDERAL AND PROVINCIAL GOVERNMENTS TO DEVELOP AND IMPLEMENT REQUIREMENTS FOR LABELLING CONTAINERS OF INDUSTRIAL CHEMICALS.

PART IX: OTHER MUNICIPALITIES

The ultimate objective is to have right to know accepted as a principle throughout this province and Canada. This will make it more practical to achieve all aspects of our right to know objectives. The City should encourage other municipalities to take actions similar to it in supporting right to know.

RECOMMENDATION 10:THE CITY OF TORONTO SHOULD ENCOURAGE OTHER MUNICIPALITIES TO PASS HAZARDOUS SUBSTANCES DISCLOSURE BY-LAWS.

RECOMMENDATION 11:THE CITY OF TORONTO SHOULD WORK THROUGH THE ASSOCIATION OF MUNICIPALITIES OF ONTARIO, THE ASSOCIATION OF ONTARIO BOARDS OF HEALTH AND THE CANADIAN FEDERATION OF MAYORS AND MUNICIPALITIES TO URGE THE PROVINCIAL AND FEDERAL GOVERNMENTS TO DEVELOP THE RIGHT TO KNOW.

APPENDIX 1:

FEDERAL AND PROVINCIAL LEGISLATION GATHERING INFORMATION ON HAZARDOUS SUBSTANCES

Environmental Contaminants Act

Agency: Environment Canada and Health and Welfare Canada

Authority to Gather Information:

1) If suspect a specific substance is dangerous, can require data from companies on:

(a) nature of substance
(b) presence in environment
(c) dispersion into environment
(d) effects
(e) processes
(f) impurities in substance

This information is to be given if the company has used the substance during the past twelve months or will use it in the coming twelve months.

2) If a company imports or manufactures 500 kilograms of a chemical compound in one calendar year for the first time, the company must inform Environment Canada of:

(a) the name of the compound
(b) quantity
(c) information respecting danger

This information must be given within three months of reaching the 500 kilogram level.

Actual Information Gathered:

1) Under 1) above: mercury, chlorobenzenes, aromatic amines, halogenated hydrocarbons, mirex, PCB, PBB, PCT, chlorofluorocarbons, chlorophenols and halogenated methanes, ethanes and ethylenes. Expect to add polyelectrolytes and brominated fire retardants in 1982.

2) Under 2) above: Between April 1, 1976 and December 30, 1980, 1273 substances were reported. Most of these were not, however, chemical compounds.

Limitations:

1) Limited number of substances that notices for information have been issued on and no indication that this is going to expand rapidly.

2) Before issuing notice, must "suspect a substance is dangerous."

3) New import or manufacture provisions:
   (a) applies only to chemical compounds
   (b) 500 kilogram minimum
   (c) information is given after the fact

4) Confidentiality provisions

5) Does not provide an inventory of existing chemicals in Canada.

Clean Air Act

Agency: Environmental Protection Service, Environment Canada and National Air Pollution Surveillance Network

Authority to Gather Information:

1) Collection and publication of data on air pollution
2) Continuing record of ambient air pollution levels in urban air

Actual Information Gathered:

1) 159 sampling stations (1979), most operated by provincial and municipal people
2) Monitoring for five most common contaminants:
   (a) sulphur oxides, particulate matter, carbon monoxide, hydrocarbons and nitrogen oxides
   (b) updated biennially
   (c) stored in National Emissions Inventory File Management System
3) Monitoring for potentially hazardous air contaminants:
   (a) 12 inventories by sources and emissions
   (b) nickel, cobalt, antimony, tin, bismuth, chromium, copper, barium, benzene, phosphorus, chlorine and hydrogen sulphide
   (c) not stored in NEIFMS
4) No confidentiality provisions

Limitations:

1) Limited number of substances tested
2) Often does not show source of contaminant
3) Limited number of monitoring stations

Transportation of Dangerous Goods Act

Agency: Transport Canada. Intends to work out agreements to have provincial governments administer parts of Act

Authority to Gather Information:

1) Manifest system for interprovincial and international waste transport
2) Placards on shipments
3) Shipping documents to accompany shipment
4) Minister may demand chemical formulas
5) Dangerous goods defined as: explosives, gases, flammable and combustible liquids, flammable solids, oxidizing substances, poisonous and infectious substances, radioactive materials, corrosives and miscellaneous as determined by Governor in council

Actual Information Gathered:

No regulations have been passed yet so no information has been gathered or action taken

Limitations:

1) Confidentiality provisions
2) No prior notice required

Environmental Protection Service Chemical Information System

Agency: Environmental Protection Service, Environment Canada, Ontario Region

Information Gathered:

1) Company dossiers (manufacturers)
   (a) what it produces
   (b) starting materials
   (c) byproducts created in process
   (d) wastes emitted (liquid, gaseous and solid)
   (e) 50 companies in Toronto by summer 1983
2) Chemical dossiers
   (a) how and where, in general, chemical is used in manufacturing
   (b) potential specific sites in Ontario where chemical may be found by industrial category
   (c) 946 chemicals to be compiled by summer 1983

Limitations:

1) Limited number of companies that will be done
2) Chemical dossiers list users only in categories
3) Confidentiality provisions

Other Federal Legislation

Fisheries Act
Has no information base

Hazardous Products Act
Concerned only with safety to consumer of a good

Pest Control Products Act
Does not gather information in a locale specific way

Food and Drugs Act
Concerned only with safety to consumer of a good

Environmental Protection Act

Agency: Ontario Ministry of the Environment

Authority to Gather Information:

1) In carrying out its functions of giving certificates of approval, program approvals, stop orders, control orders and repair orders, the Ministry may conduct investigations, including inspections and set up monitoring programmes. It may gather and require from the applicant or person responsible for contaminant any information.

2) Any person who spills a contaminant must report it to the Minister. A spill is anything that has not been covered by one of the approvals or orders listed in 1) above. Under a regulation that has not yet been proclaimed, such spills will also have to be reported to the municipality.

3) All hauled liquid industrial waste must have a waybill stating the source, the disposal place and the type of waste. These waybills are to be mailed to the Ministry by the last day of each week.

Limitations:

1) Certificates of approval, program approvals, stop orders, control orders and repair orders apply only to emissions of contaminants. Therefore, toxic substances that are not normally emitted from the plant would not be noted under this system.

2) After a spill the person is required to notify the province and soon the municipality. Our objective here, however, is to know in advance what is in a place so that protective actions can be taken.

3) Waybill system applies only to liquid industrial wastes that are carried on public roads. It does not tell which hazardous wastes are not taken on public roads.

4) Waybill system does not tell all hazardous substances that are in plant, only liquid wastes.

5) Waybill information is not released according to generator of the wastes.

6) Waybill system does not tell the specific substances. It only asks that they check off from 23 categories. Most of the categories are so broad that it is impossible to tell whether it is a hazardous substance.

Occupational Health and Safety Act

Agency: Ontario Ministry of Labour

Authority to Gather Information:

1) May conduct inspections and monitor
2) Before manufacturing, distributing or supplying a new biological or chemical substance or combination for use in commercial or industrial places, the Ministry must be notified.
3) Employer must provide workers with information on hazardous substances in the workplace.
4) Joint health and safety committees must be provided with information on potential or existing hazardous materials in the workplace by the employer.

Actual Information Gathered:

1) Results of inspections and monitoring
2) Listing of new substances

Limitations:

1) Information is sporadic; it covers only what are perceived by the Ministry as problem areas. Therefore, it is incomplete.
2) Confidentiality provisions

Pesticides Act

Agency: Ontario Ministry of the Environment

Authority to Gather Information:

1) License is required to sell pesticides and to operate extermination business. On license usually are required to list type of pesticide.
2) Vendor must keep record of sales of schedule 1, 2 & 5 pesticides.
3) Vendor who stores pesticides must have warning signs on door of storage area.
4) Vendor must notify fire department of presence of pesticides on premises.
5) Transportation in bulk on public road must have warning sign on outside of vehicle.

Actual Information Gathered:

1) Vendor and exterminator permit applications

Limitations:

1) Pesticides listed by category only
2) License information available only in paper files
3) Confidentiality provisions
4) Does not cover manufacturers except when they become wholesalers.

Other Provincial Legislation

Dangerous Goods Transportation Act

Will require placarding, but regulations have not yet been implemented. Does not gather and compile information on nazardous goods transported.

Environmental Assessment Act

Applies to only a limited number of projects. Provides data of intention only since it occurs before the project is begun.

Ontario Water Resources Act

Operates in a way similar to and often under the Environmental Protection Act. Is subject to the same strengths and weaknesses.

Public Health Act

Information on hazardous substances is not gathered in a routine way.

APPENDIX 2:

PROVINCIAL LEGISLATION DELEGATING RELEVANT POWERS

Sec. 210: By-laws may be passed by the councils of local municipalities:

Regulating, storing and transportation of explosives

8. For regulating the keeping, storing and transporting of,

(*a*) dynamite, dualin, nitro-glycerine or gunpowder;

(*b*) petroleum, gasoline or naphtha;

(*c*) detonators and detonator caps; and

(*d*) other dangerous or combustible, inflammable or explosive substances.

Licences for carrying on business

16. For granting licences for the carrying on of the business of manufacturing the substances mentioned in paragraph 8 or for storing them in quantities of more than eleven kilograms, and prescribing the time, not exceeding five years, during which the licences shall remain in force, provided that the licence fee shall not exceed $25 a month for every month in which such business is carried on. R.S.O. 1970, c. 354 (1), par. 17; 1978, c. 87, s. 40 (4).

Storing, etc., of gasoline, etc.

17. For prohibiting or regulating the keeping or storing of gasoline or benzine, and prescribing the materials of which the vessels containing it shall be composed, and the classes of buildings in which it may be stored or kept for sale, and for making regulations for the prevention of fires and accidents from the combustion or explosion of such substances.

Control of industrial nuisances

128. For regulating manufactures and trades that in the opinion of the council may prove to be or may cause nuisances of any kind, and, without restricting the generality of the foregoing, for prohibiting or regulating the erection or continuance of gas works, tanneries or distilleries or other manufactories or trades that, in the opinion of the council, may prove to be or may cause nuisances. 1972, c. 124, s. 10 (2), *part*.

Control of land used for disposal of refuse

129. For prohibiting or regulating and inspecting the use of any land or structures within the municipality or any defined area or areas thereof for dumping or disposing of garbage, refuse, or domestic or industrial waste of any kind.

Nuisances

134. For prohibiting and abating public nuisances. R.S.O. 1970, c. 284, s. 354 (1), pars. 118-120.

Control of sewage

147. For prohibiting, regulating and inspecting the discharge of any gaseous, liquid or solid matter into land drainage works, private branch drains and connections to any sewer, sewer system or sewage works for the carrying away of domestic sewage or industrial wastes or both, whether connected to a treatment works or not.

PLANNING ACT (1983)

1. In this Act,

(h) "official plan" means a document approved by the Minister, containing objectives and policies established primarily to provide guidance for the physical development of a municipality or a part thereof or an area that is without municipal organization, while having regard to relevant social, economic and environmental matters;

50. (4) In considering a draft plan of subdivision, regard shall be had, among other matters, to the health, safety, convenience and welfare of the present and future inhabitants of the local municipality and to the following, What matters to be regarded

Nuisances, what to be deemed

115. Any condition existing in a locality that is or may become injurious or dangerous to health or that prevents or hinders or may prevent or hinder in any manner the suppression of disease shall be deemed a nuisance within the meaning of this Act. R.S.O. 1970, c. 377, s. 85.

Particular nuisances

116. Without restricting the general application of section 115 and for greater particularity,

(*g*) any work, manufactory, trade or business so situated as to be injurious or dangerous to health;

(*i*) any schoolhouse, public or private, factory, shop or other building that is not in a clean state or free from effluvia arising from a drain, privy, water or earth closet, urinal or other nuisance, or that is not ventilated in such a manner as to render harmless so far as practicable any gases, vapours, dust or other impurities generated therein that are injurious or dangerous to health, or that is so overcrowded as to be injurious or dangerous to the health of those employed or being therein;

(*j*) any fireplace or furnace, the fires of which do not, so far as practicable, consume the smoke arising from the combustible matter used therein for working engines or used in a mill, factory, dye-house, brewery, bakehouse or gas works, or in any manufacturing or trade process whatever;

(*k*) any chimney emitting smoke in such quantity as to be injurious or dangerous to health; and

shall be deemed nuisances within the meaning of this Act. R.S.O. 1970, c. 377, s. 86.

Duty of medical health officer

122.—(1) Every medical officer of health shall ensure that the municipality or location for which he is appointed is regularly inspected in order to prevent nuisances or to abate any existing nuisance.

SCHEDULE B

(Sections 14 (6), 156)

BY-LAW IN FORCE IN EVERY MUNICIPALITY UNTIL ALTERED BY THE MUNICIPAL COUNCIL

Duty of M.O.H.

1. The medical officer of health shall assist and advise the local board of health and its officers in matters relating to public health, and superintend the enforcement and observance within the municipality of health by-laws or regulations, and of public health Acts, and of any other sanitary laws, and perform such other duties and lawful acts for the preservation of the public health as are, in his opinion, necessary, or as are required by the Ministry of Health for Ontario. He shall also present to the said board, before the 31st day of January in each year, a full report upon the sanitary condition of the municipality during the preceding calendar year.

HEALTH PROTECTION AND PROMOTION ACT (1982)

This Act will come into force in early fall 1983; at that time the Public Health Act will be repealed.

1. In this Act,

9. "health hazard" means,

i. a condition of a premises,

ii. a substance, thing, plant or animal other than man, or

iii. a solid, liquid, gas or combination of any of them,

that has or that is likely to have an adverse effect on the health of any person;

Duty of M.O.H. re occupational and environmental health

12.—(1) Every medical officer of health shall keep himself informed in respect of matters related to occupational and environmental health.

Provision of information to M.O.H.

(2) The Ministry of the Environment, the Ministry of Health, the Ministry of Labour or a municipality shall provide to a medical officer of health such information in respect of any matter related to occupational or environmental health as is requested by the medical officer of health, is in the possession of the ministry or municipality and the ministry or municipality is not prohibited by law from disclosing.

APPENDIX 3:

MATERIAL SAFETY DATA SHEET

MATERIAL SAFETY DATA SHEET*

SECTION I

Product Name: Size:

Chemical Name:

Formula:

Manufacturer:

Address:

For Information on Health Hazards Call:

For Other Information Call: Signature and Date:

SECTION II HAZARDOUS INGREDIENTS OF MIXTURES

Principal Hazardous Component (s)	%	TLV (Units)

SECTION III PHYSICAL DATA

Boiling Point (°F.)		Specific Gravity (H_2O=1)	
Vapor Pressure (mm Hg.)		Percent Volatile By Volume (%)	
Vapor Density (Air=1)		Evaporation Rate (=1)	
Solubility in Water			
Appearance and Odor			

SECTION IV FIRE AND EXPLOSION HAZARD DATA

Flash Point (Method Used)	Flammable Limits in Air % by Vol.	Lower	Upper
Extinguisher Media	Autoignition Temperature		

Special Fire Fighting Procedures

Unusual Fire and Explosion Hazards

* A standard form (Form OSHA-20) used by many manufacturers to describe the health and safety hazards of their products.

SECTION V HEALTH HAZARD DATA

Threshold Limit Value

Effects of Over exposure
Acute Overexposure:
Chronic Overexposure:

Emergency and First Aid Procedures
Inhalation:
Eyes:
Skin:
Ingestion:

SECTION VI REACTIVITY DATA

Stability	unstable	Conditions to Avoid
	stable	

Incompatibility (Materials to Avoid)

Hazardous Decomposition Products

Hazardous Polymerization		Conditions to Avoid
May Occur	Will not Occur	

SECTION VII SPILL OR LEAK PROCEDURES

Steps to Be Taken In Case Material is Released Or Spilled

Waste Disposal Method

SECTION VIII SPECIAL PROTECTION INFORMATION

Respiratory Protection (Specify Type)

Ventilation	Local Exhaust	Special
	Mechanical (general)	Other

Protective Gloves	Eye Protection

Other Protective Clothing or Equipment

SECTION IX SPECIAL PRECAUTIONS

Precautions To Be Taken In Handling And Storing

Other Precautions

APPENDIX 4:

CONFIDENTIALITY PROVISIONS

SOME CONFIDENTAILITY PROVISIONS IN FEDERAL LEGISLATION

Environmental Contaminants Act (1976)

Non-disclosure of certain information

(4) Any information received pursuant to subsection (1), subsection 3(2) or paragraph 3(3)(*a*) that relates to a formula or process by which any thing is manufactured or processed, whether patented or not, or to other trade secrets or that is sales or production information that has been specified, in writing, as information that is given in confidence shall not be disclosed except as may be necessary for the purposes of this Act.

Transportation of Dangerous Goods Act (1980)

23.

Privileged information

(3) Subject to subsection (4), information disclosed to the Minister pursuant to this section and information of a similar nature obtained pursuant to paragraph 14(2)(*b*) or an inquiry under section 20 is privileged and notwithstanding any other Act or law, no person shall be required, in connection with any legal proceedings other than legal proceedings relating to the administration or enforcement of this Act, to produce any statement or other writing containing any such information or to give evidence relating to any such information.

Exception

(4) The privilege provided by subsection (3) does not apply to information referred to in that subsection

(*a*) to the extent that it relates only to the dangerous properties of any product, substance or organism without revealing the formula, composition or chemical ingredients thereof; or

(*b*) to the extent that it is required to be disclosed or communicated for the purposes of an emergency involving the health or safety of any person or the public.

Disclosure of privileged information

(5) No person to whom any privileged information has been provided shall knowingly, without the consent in writing of the person by whom the information was provided,

(*a*) communicate or allow to be communicated to any person, or

(*b*) allow any other person to inspect or have access to

any such information except for the purposes of the administration or enforcement of this Act.

SOME CONFIDENTIALITY PROVISIONS IN ONTARIO LEGISLATION

Environmental Protection Act (1981)

Matters confidential

130.—(1) Except as to information in respect of the deposit, addition, emission or discharge of a contaminant into the natural environment, every provincial officer shall preserve secrecy in respect of all matters that come to his knowledge in the course of any survey, examination, test or inquiry under this Act or the regulations and shall not communicate any such matters to any person except,

(*a*) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act or the regulations;

(*b*) to his counsel; or

(*c*) with the consent of the person to whom the information relates.

Occupational Health and Safety Act (1981)

Information confidential

34.—(1) Except for the purposes of this Act and the regulations or as required by law,

(*a*) an inspector, a person accompanying an inspector or a person who, at the request of an inspector, makes an examination, test or inquiry, shall not publish, disclose or communicate to any person any information, material, statement, report or result of any examination, test or inquiry acquired, furnished, obtained, made or received under the powers conferred under this Act or the regulations;

(*b*) no person shall publish, disclose or communicate to any person any secret manufacturing process or trade secret acquired, furnished, obtained, made or received under the provisions of this Act or the regulations;

Matters confidential

19. Except as to information in respect of,

(*a*) impairment or potential impairment of the quality of the environment for any use that can be made of it; or

(*b*) harm or potential harm to or an adverse effect on any person, living thing or any property,

arising from or likely to arise from the handling, storage, use, disposal, transportation or display of a pesticide or a substance or thing containing a pesticide, every provincial officer shall preserve secrecy in respect of all matters that come to his knowledge in the course of an examination, test or inquiry of or into any matter under this Act or the regulations and shall not communicate any such matter to any person except,

(*c*) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act or the regulations;

(*d*) to his counsel; or

(*e*) with the consent of the person who is responsible for the handling, storage, use, disposal, transportation or display of the pesticide, substance or thing. 1973, c. 25, s. 19.

APPENDIX 5:

READING MATERIALS

READING MATERIALS

Right to Know:

Community Right to Know: Hazardous Materials Disclosure Information Systems, ed. Susan Sherry and Regina Purin. Golden Empire Health Systems Agency, Sacramento, California. January 1983.

Community Right-to-Know: A Handbook on Toxic Substances Disclosure. Governor's Office, State of California, Sacramento, California. February 1982.

Public Access to Information:

Freedom of Information in Local Government in Ontario, Stanley M. Makuch and John Jackson. A report for the Commission on Freedom of Information and Individual Privacy, Toronto. May 1979.

Lifelines: OCAW Health and Safety News, April 1979.

Public Government for Private People. Report of the Commission on Freedom of Information and Individual Privacy, Toronto. August 1980.

Toxic Chemical Information: An Industrial Perspective, W.A. Neff. A paper for the Roundtable Discussions on Toxic Chemicals Law and Policy in Canada, Toronto. 1981.

Transportation:

Report of the Inter-Association Working Group on Transportation of Dangerous Goods. Association of Municipalities of Ontario, Toronto. October 1981.

Labelling:

Industrial Chemical Labelling: The Need for Canadian Regulations, Robert Sass and Richard Butler. Saskatchewan Labour, Regina. May 1979.

Federal and Provincial Legislation:

Toxic Chemicals Control in Canada: An Analysis of Law and Policy, J.F. Castrilli. A paper for the Roundtable Discussions on Toxic Chemicals Law and Policy in Canada, Toronto. 1981

A.1

RESOLUTIONS FROM 1981 ANNUAL MEETING

Three resolutions were passed by the general membership at the 1981 Annual Business Meeting of the Ontario Public Health Association. The resolutions, which are reprinted below, have been forwarded to the appropriate provincial and/or federal government ministries. By press time, Ontario's Minister of the Environment, Keith Norton, had written to say he is "in full support" of the resolution on the pre-manufacture testing of industrial chemicals.

On the same resolution, Canada's Minister of Health and Welfare, Monique Begin said, "Canada has participated in the development of test guidelines and procedures for pre-market review of chemicals" as part of an international effort. She also said, "I am hopeful that this international program will be implemented over the next few years with significant benefits (to Canadians)".

RESOLUTION ON FUNDING OF COMMUNITY HEALTH SURVEYS

WHEREAS the Government of Ontario is committed to expanding the public health sector, including research into public health

and WHEREAS proper determination of health needs in a community requires the carrying out on a regular basis of community health surveys.

and WHEREAS the Canada Health Survey was cancelled

BE IT RESOLVED THAT the Ontario Public Health Association urges the Ministry of Health of Ontario to conduct, and/or promote the conducting of community health surveys on a regular basis in order to produce the data needed for adequate health planning by the Ministry, District Health Councils, Public Health Departments and other relevant agencies.

RESOLUTION ON PRE-MANUFACTURE TESTING OF INDUSTRIAL CHEMICALS

WHEREAS there is at present no requirement for the assessment of the health and environmental effects of new industrial chemicals to be notified to governments in Canada prior to their manufacture.

and WHEREAS such a requirement for pre-manufacture notification will ensure that all new chemicals are adequately tested and evaluated before their widespread introduction to the environment.

and WHEREAS such a pre-manufacture notification process can be an important means of protecting public health and the environment

THEREFORE BE IT RESOLVED THAT the Ontario Public Health Association calls upon the Federal Government and the Ontario Government to require that the results of all testing of new or newly imported industrial chemicals be notified to the Government prior to their manufacture or distribution.

RESOLUTION ON FREEDOM OF INFORMATION

WHEREAS the public including workers, have little or no knowledge of the identity, properties, health or environmental effects of many of the chemicals to which they are exposed

and WHEREAS industry has frequently claimed that such information is confidential and its own intellectual property, and has refused to release such information

and WHEREAS such information is needed to adequately determine the threat to public health posed by such chemicals

and WHEREAS the Ontario Government has announced its intention to introduce Freedom of Information legislation

THEREFORE BE IT RESOLVED that the Ontario Public Health Association calls upon the Ontario Government to enshrine in Freedom of Information legislation the right of the public to know about the identity, properties, health and environmental effects of the chemicals to which they are exposed

and FURTHERMORE BE IT RESOLVED that the Ontario Public Health Association calls upon the Ontario Government to enshrine in Freedom of Information legislation the principle that the public's right to know about the actual or potential health or environmental effects of a chemical takes precedence over any company's or individual's right to protect such information for whatever reason.

1981 CONFERENCE PAPERS AVAILABLE

Several papers presented at OPHA's 32nd Annual Conference are available for purchase. Please write to the OPHA Office, 33 Price St., Suite 102, Toronto, Ont. M4W 1Z2 and enclose a cheque or money order to cover the appropriate photostating and handling fees (in brackets) which represents a cost of 15 cents per page. OPHA members, please deduct 15%. **Note:** The paper by D. Korn was accidently omitted from the list published in the last Newsletter.

D. CAPPON. "Survival? Adaptation for Health." ($3.45)
H.P. DEMSHAR. "How Not to Smoke: The Medical Perspective." ($1.35)
H.P. DEMSHAR, J. GARCIA, D. RANDALL. "A formulated Evaluation of the Lung Awareness Program: the joint project of the Ont. Min. of Health and the York Toronto Lung Assoc." ($0.45)
M.L. DICKIN. "Crisis Management: A Dramatization Based on the North York Experience." ($0.75)
J.D. GALLOWAY. "The Confidentiality of Health Information." ($2.40)
T. HANCOCK. "From Survival Through Ecological Adaptation to Health: The role of the Ontario Public Health Association." ($2.55)
D. KING. "Managing Human Resources in Public Health." ($0.90)
G. LEWIS. "Clean Air for Office Workers" ($0.75)
A.M. MATHEWS. "Retirement. From Work; Retirement to ... ?" ($2.55)
W.H. LE RICHE. "Food Additives — So What?" ($2.40)
J.A. SCOTT. "The Recluse — Their Rights, our Responsibilities." ($1.05)
J.O. SLINGERLAND. "Computer Systems: Use and Design in Public Health." ($1.05)
R. BAKER. "Computer Systems: Review of System 6 Program." ($0.75)
D. TIMBRELL. "The Proposed Health Protection Act and STD Programs." ($1.20)
D. KORN. "The Challenge to Eliminate Measles in Canada." ($0.75)